

EXHIBIT 9

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF RHODE ISLAND

3
4 * * * * * C.A. NO. 00-105L
5 EFRAT UNGAR, et al *
6 VS. * APRIL 4, 2008
7 * 2:08 P.M.
8 THE PALESTINIAN LIBERATION *
9 ORGANIZATION, et al *
10 * * * * * PROVIDENCE, RI

11 BEFORE THE HONORABLE RONALD R. LAGUEUX,
12 SENIOR JUDGE
13 (Defendants' Motion to Set Aside Default)

14
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1 other issues that are raised by the Plaintiffs in suggestion
2 that the Court ought not even reach the question of
3 meritorious defenses in this case.

4 And let me start with the fundamental question of
5 whether or not the default here was willful. And let me say
6 to the Court that, after a moment or so, I'll get to what I
7 believe are some nuanced aspects of that question. But,
8 fundamentally, Your Honor, we recognize in our pleadings and
9 before you that it would be within the ambit of your
10 discretion to find that it was a willful default.

11 So I've given that first answer. But I think it is
12 important to note, after saying so, that the Court consider
13 the circumstances as of the time of the default. And the
14 parties agree that the relevant inquiry, the relevant time
15 point for you to make that inquiry, is as of the default,
16 not as to conduct subsequent to the default. In Footnote 2
17 of the Plaintiffs' objection to our motion, they note that,
18 that is the relevant time frame for you to make that
19 inquiry.

20 When the default-- and I distinguish between the
21 default and the default judgment-- when the default was
22 entered, it was entered-- recommended below by the
23 Magistrate Judge even prior to the time that you had ruled
24 on the issues of sovereign immunity, and you eventually
25 ruled on the sovereign immunity and accepted the

1 recommendation as to default, as of that moment, the
2 willfulness of the Defendants was not as culpable as it
3 might otherwise have been.

4 And let me rush to say, Your Honor, I'm not
5 suggesting that the Defendants would not have defaulted in
6 light of subsequent events. The Defendants defaulted in
7 other cases, even after you reached your decision as to
8 sovereign immunity, that the Palestinian Authority is not
9 sovereign.

10 But the law does say that you ought to look at the
11 consciousness of the Defendants as of the time of the
12 default, as of that very moment, the Defendants' culpability
13 in regard to the procedural history of this case, and the
14 entry of the default is not what it is sometimes portrayed
15 to be by the Plaintiffs.

16 The real question as to the culpability of the
17 Defendants in that regard goes, I think, more to the timing
18 of the raising of the motion to vacate the default, as
19 opposed to what the mental state was at that moment.

20 Having admitted that it would be within the ambit
21 of your discretion to say that the default was willful, the
22 next question that's raised by the Plaintiffs is they
23 suggest that, therefore, that ends the inquiry, that this
24 Court may not, in the exercise of its discretion,
25 nonetheless, consider the other factors relevant to a motion

1 to vacate under Rule 60(b). As to that, we disagree with
2 the Plaintiffs. And, in fact, I think the First Circuit has
3 indicated that it does not agree with the Plaintiffs.

4 The case law of this jurisdiction recognizes that,
5 ordinarily, and I quote, "Willfulness is, by itself,
6 dispositive." But by the very use of the word ordinarily,
7 the First Circuit has allowed for a situation that would be
8 extraordinary.

9 The Plaintiffs have argued before you that there's
10 an entire series of cases and Supreme Court holdings that
11 establish beyond any doubt whatsoever that willfulness alone
12 ends the inquiry.

13 That cannot be so, as we have referred the Court to
14 many cases where trial courts and appellate courts have
15 found willfulness but then, nonetheless, vacated
16 a default.

17 Indeed, the case upon which the Plaintiffs rely
18 most strongly for the notion that you ought not even
19 consider anything after a finding of willfulness is out of
20 the 11th Circuit, and subsequent to that, they decided the
21 Jackson case, upon which we have argued at some length in
22 our pleadings, where the Court found a willful default but
23 vacated it, nonetheless, as to China.

24 Recently, another Federal Judge, in the Knox case--
25 and the Knox case is another case against the Defendants for

1 similar allegations in the Southern District of New York,
2 and, on occasion, in your rulings in this case, you've noted
3 similar rulings made by the Court in the Knox case.

4 Recently, Judge Marrero, in the Knox case, had to
5 address the very question, is a willful default, by itself,
6 an inquiry-ender, and concluded, in vacating a default
7 judgment entered against the same Defendants as are before
8 you today, that willfulness was not an inquiry-ender and
9 went on to consider the extraordinary circumstances and the
10 meritorious defenses in that case in ordering the vacatur of
11 a default judgment of \$192 million.

12 We would suggest to the Court that the inquiry by
13 Judge Marrero, which I realize is not binding on you as a
14 fellow United States District Court Judge in another
15 jurisdiction, it is, hopefully, somewhat persuasive to you
16 but certainly doesn't control the exercise of your
17 discretion, but we think the analysis that is laid out there
18 as to this legal point is the correct analysis. All of this
19 is simply to say that it is within your discretion to
20 consider the meritorious defenses and the extraordinary
21 circumstances presented in this case.

22 The Plaintiffs have also argued, Your Honor, that
23 we are precluded from raising this motion by virtue of the
24 prior litigation in this Court and in the First Circuit.
25 They have argued that, in essence, prior rulings by you or

1 by the First Circuit preclude the Defendants from arguing a
2 motion to vacate default whatsoever or, in the context of so
3 arguing, raising meritorious defenses. On that point, we,
4 again, disagree with the Plaintiffs on that question of law.
5 There was not before the First Circuit any motion to vacate
6 a judgment.

7 Judge Marrero addressed the same argument raised in
8 the same way in his recent opinion and noted that the
9 appellate, in that instance, terminated appellate litigation
10 in the Second Circuit, had not involved a motion to vacate,
11 that it would have been inapposite to raise the issues on
12 that appeal that were raised by the motion to vacate.

13 Similarly, the issue of whether or not we have a
14 meritorious defense was not litigated before the First
15 Circuit. The question of whether or not you ought to vacate
16 this default judgment was not litigated before the First
17 Circuit. And your discretion is not circumscribed
18 whatsoever in that regard in addressing this motion by the
19 First Circuit opinion, given that we are not raising any
20 issues in our motion that were litigated before the First
21 Circuit.

22 The arguments by the Defendants before the First
23 Circuit dealt with sovereign immunity. We're not claiming
24 we're sovereign. It dealt with whether or not the amount of
25 the judgment created a political question under the

1 Political Question Doctrine. We're not arguing that it
2 does. They argued that you should not have entered default
3 judgment prior to ruling upon sovereign immunity. We're
4 certainly not arguing that point again here. In short, the
5 efforts to preclude us from raising these arguments and
6 these defenses fall short.

7 What I would suggest, Your Honor, therefore, is
8 that the Court does need to reach the other factors under
9 Rule 60(b)(6) in addressing this motion. And I'd like to
10 move on to those other factors after first referencing in a
11 slightly more extended way the recent Knox opinion, with
12 which I assume that the Court is familiar. We brought it to
13 the Court's attention last week, if the Court had not
14 already, in its research, been made aware of it.

15 The Knox opinion addresses several points that are
16 relevant here. The first I've mentioned, Is willfulness
17 dispositive? No. Is litigation precluded? Also previously
18 addressed. No. The question of the importance of merits
19 litigation in a situation such as this is discussed
20 extensively there. The question of prejudice in connection
21 with the granting of a motion is discussed there. And the
22 exceptional circumstances and the importance of foreign
23 policy issues are all discussed there.

24 And the Court addressed those, even in the face of
25 the United States not filing a formal suggestion of interest